IN THE HIGH COURT OF JUDICATURE AT MADARAS

DATED: 22.6.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

A.S.No.908 of 1991
and
Review Appln.No.145/2003
....

1. Anna Marie Bernard Joseph

2. Santha Ruban Louis Joseph
(both legal representatives of the
deceased Bernard Joseph)

3. Ashoka Mauriya Pallava Historical Trust,
Pondicherry, rep. by its Trustee,
Anna Marie Bernard Joseph,
No.167-B,Mahatma Gandhi Road,
Pondicherry.

Cause title of the Appellants accepted
vide order dated 15.11.91 made in
CMP.No.14724/91 ... Appellants/plaintiffs

vs.

1. Lady Lourdomariammal
alias Pappayammal

2.Victor Moeliar Alias Victor
Djegnadin called also Sinnaya

3.Antoine Radjabather Modeliar

4.Boopathy Modeliar

5.Mouttou Modeliar

6.Lourdusamy Modeliar

7.Joseph Modeliar @ Jothi Mudaliar

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8.His Grace Archbishop Apostolic
Missions, Pondicherry.

9.The Parish Priest of Our Lady
of Lourdes at Canuvapet, Villianur.

10.The Commissioner of Mudaliarpet
Commune, Mudaliarpet Commune
Panchayat, Mudaliarpet,
Pondicherry.

11.Louis Sinnaya Aroquisamy Mudaliar

12.Louis Pragasa Kannaya

13. Jeanate Rosanee

14. Aroquiamarie

15. Marie Coyundai Ammal

16. Swadeshi Cotton Mills,
Orleanpet, Pondicherry.

17. United Commercial Bank,
rep. by its Manager, Head Office
Mahe Labourdonais Street, Pondichery.

18. Rathina Marie (died)

19. Kamala Marie Antoineeth

20. Thayarammal

21. Lourde Thanga Marie Vilva

22. Marie Tayarammal Pushpa

23. Vedavalli Sakunthala

24. Louis Aroquiasamy

25. Pillai Appavou Joseph

26. Elisabeth

27. Sakunthala

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28. Radjayammalle

29. Ammakannu

30. State Bank of India,
rep. by Manager, Suffren Street,
Pondicherry.

31. Director General,
Archaeological Survey of India,
Janpath, New Delhi-1.

32. Union of India by
Authorised Officer, Land Reforms
Pondicherry.

33. J.Muthiah Ambroise

34. Mrs.Jaya Ambroise Liguori

35. J.Victor Jaganathan Ambroise @ Jagan

36. A.John Ambroise

RR33 to 36 brought on record as LRs
of the deceased 18th respondent as
per order of Court dated 9.7.2003
made in CMP.No.17415/98.

Cause title amended
vide order dated 22.06.06
made in CMP.No.2974/06 ... Respondents.

Appeal filed against the judgment and decree dated 9.5.1991 in O.S.No.2 of 1978 on the file of Principal District Judge, Pondicherry.

For appellants: Mr.G.Masilamani, Sr.counsel for
M/s.M.Sriram,D.Rajendran & D.Balaraman

For 12th respondents: Mr.T.V.Ramanujam, Sr.counsel for
M/s.T.V.Krishnamachari & V.K.Elangovan

Mr.T.R.Rajagopal, Sr.counsel for
M/s.T.R.Rajaraman.. R.18, 33 to 36

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Mr.P.S.Raman, Sr. Counsel for
M/s.D.Rajagopal & S.Annamalai... R11

Mrs.Meera Gupta .. R31.

Mr.Krishnasrinivas for
M/s.Ramasubramaniam Associates.. R16

Mr.R.Subramanian R 29

Mr.R.Bharanidharan, Adv.-Commissioner.

....

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

....

I.JUDGMENT & DECREE UNDER APPEAL

This appeal is directed against the judgment and decree dated 9.5.1991 made in O.S.No.2 of 1978 on the file of Principal District Judge, Pondicherry by which the suit filed by the plaintiffs was dismissed.

1.1. For sake of convenience, the parties are hereinafter referred to as arrayed in the plaint.

II.CASE OF THE PLAINTIFFS

2. The case of the plaintiffs is, in brief, as follows:-

2.1. One Arockiam was the descendant of the Royal family of Pallavas. He left the fortress of Anantal at Karthanpeth, also known as Korthampeth, which was in a state of ruin, in order to come and settle at Pondicherry. At that time, he was provided with gold jewels possessed by him and his brothers. Then, he acquired properties.

2.2. His fifth degree descendant, Louis Aroquiassamy Mudaliar made a mystic will dated 21.1.1933 which was opened by the President of the Court on 8.7.1935 and ordered to be deposited in the Office of Mr.Vandjilinga Saminadin, Notary.

2.3. The said Louis Aroquiassamy Mudaliar died without issues. Some of the brothers of Arockiam had issues, who got some descendants and at present, they are 143 in number.

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2.4. Bernard Joseph, husband of the plaintiff Anna Marie, centralised into his hands the rights of all collaterals of Louis Aroquiassamy Mudaliar by obtaining transfer of rights from them and he exercised his rights on the estate of Louis Gnana Aroquiassamy Mudaliar.

2.5. Bernard Joseph had no intention to appropriate the properties for himself, but he intended to allot an amount of compensation to each and every collateral, besides creating a trust called, "Asoka Maurya and Pallava Historical Trust".

2.6. With regard to Pallava Naick family, an article, "Pallava naicks of Korthampeth" was written by Dr.M.Aroquiassamy and approved by the Royal Asiatic Society of Calcutta whereunder the family of Arockiam is traced to the Pallava Naick of Korthampet.

2.7. The second will executed by Louis Gnana Aroquiassamy Mudaliar dated 9.2.1935 was registered and probated and letters of administration was granted by the District Court at Cuddalore in O.S.No.11 of 1936. But, the mystic will dated 21.1.1933 executed by him is a false document. The defendants suppressed the truth and were asserting right on the basis of the false will. However, the will dated 9.2.1935 determines the rights between the parties and supersedes the earlier mystic will dated 21.1.1933.

2.8. Papayee ammal (first defendant) never got any absolute right in the suit properties left by Louis Gnana Aroquiassamy Mudaliar, but she got only a life interest or limited interest as per will dated 9.2.1935.

2.9. The said Papayee ammal died on 23.6.1965 and other legatees predeceased her. Hence, the reversioners of Louis Gnana Aroquiassamy Mudaliar have a clear and absolute right to the suit properties, which are now in the hands of the plaintiffs.

2.10. The mystic will dated 21.1.1933 deposited on 12.7.1935 in the office of Vandjilinga Saminadin is null and void. The second defendant, who had no right, disposed of the properties. The first defendant, who had the right only over the usufructs, also sold the properties. The transfer deeds and sale deeds must be declared void. The special bequests made in favour of other defendants should also be declared null.

2.11. The State Bank of India is added as a party since the jewels which were taken inventory by the Court Commissioner have been kept in safe locker pending suit.

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2.12. The Director of Archaeological Survey of India is also added as necessary party for enabling the court to consider the historical events arising out of the acquisition of suit properties.

2.13. Hence, the suit was filed with the following prayer:-

(i) for declaration that the mystic will dated 21.1.1933 said to have been executed by Louis Gnana Aroquiassamy on behalf of the requisite parties, opened by the President of Court of First Instance on 8.7.1935 and as per order of the said Court deposited the said will in the office of Mr.Vanjilinga Saminadin, Notair is null and void;

(ii) for declaration of forfeiture of the right of Lourdemariammal alias Papayammal who has abused of her right of usufruct under the forged and mystic will dated 21.1.1933;

(iii)for declaration of various sales, donations, mortgages, and letting out the various consents and agreements on behalf of third parties by the first requisite party as well as the second requisite party who were without right to do it, by virtue of the impugned mystic will dated 21.1.1933, are null;

(iv) for declaration that the requesting party in her above capacity is of exclusive and incommutable owner of the properties depending on the estate of Louis Gnana Aroquiasamy Mudaliar;

(v) to appoint a Receiver in Order to manage and administer the properties depending on the estate of Louis Aroquiassamy Mudaliar in order to preventing a bigger squandering of properties which pursue constantly. In spite of the scandal caused by the acting so reprehensible, with mission for the Receiver to deposit in the State Bank of Pondicherry the money coming from the income of the said properties which will be remitted into the hands of the person to whom it will be by justice ordered, and to bear sentence the requisite parties to the costs and under all useful reserves;

(vi) to direct the defendants to remit the income of the properties into the hands of the 2nd plaintiff in the event of 1st plaintiff succeeding in her claim for absolute title; and

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(vii) for costs.

III. CASE OF CONTESTING DEFENDANTS

3. The case of the contesting defendants, as culled out from the written statements filed by them, is as follows:

3.1. There is no plaint filed as required in law to complete the formality of institution of proceedings before the civil Court under the Code of Civil Procedure. Hence, the proceedings may be rejected as one with no legal sustainability to be retained on record as a suit.

3.2. The identity of the original plaintiff himself is not made out. Anna Marie Bernard Joseph, described as a Power of Attorney of Bernard Joseph, is shown to be a plaintiff. If a plaintiff is to be represented by an agent whose appearance on behalf of the principal is permitted as per procedure of the Court, then such description is to follow. But, it is not made clear in the plaint who is the plaintiff.

3.3. Bernard Joseph is said to be having a representative capacity to represent 143 persons whose names and identity are not anywhere described, nor the authorisation given to Bernard Joseph is disclosed.

3.4. When Bernard Joseph himself is said to be a representative of others, who are claiming to hold interest in the properties, he cannot further delegate the alleged power to another person, namely, his wife Anna Marie Bernard Joseph. There is no permission so far granted by the Court to the plaintiff for appearance on behalf of anybody.

3.5. When Bernard Joseph claims that he is not intending to appropriate for himself all the properties and is creating a society for the pursuit of education of Historical Dynasty of Pallavas, he is neither a beneficiary under the trust, nor a person interested in the relief sought for under the so-called trust yet to be formed, nor a person interested in the properties. Therefore, he has no locus standi to institute any proceeding.

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3.6. Bernard Joseph has to be non-suited on the sole ground of approaching the court with champertous agreements for the purpose of a speculative litigation.

3.7. The very existence of Arockiam as Pallava at any point of time is denied. Such a claim of descendency from the Royal family of Pallava is also denied. In this case, the alleged occurrences of

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events have no proof and by inference some sequences of events are stated to be history which means that there is no proof for the alleged events constituting history. The plaintiffs have no proof as to the existence of Arockiam as one connected to Pallava Naickas. There is no historical reference showing that a Pallava King or his descendent anywhere lived in the village Korthampet in Sengam taluk or at Anantal.

3.8. The article, "Pallava Naicks of Korthampet" does not explain the connection between the child born to a pregnant woman who was spared in the battle, and the alleged Arockiam. The article does not refer to any Arockiam alleged to be the ancestor of Louis Gnana Aroquiassamy Mudaliar. The article is an unauthenticated version of an individual which has no basis at all.

3.9. The photographs so filed will, by no means, constitute any material proof to sustain the allegation that there existed one Arockiam at Korthampet and Louis Gnana Aroquiassamy Mudaliar was his descendent. Neither the existence of the alleged ruined temple, nor ruined fortress in the village of Anantal is proved by the photographs.

3.10. Further, when the first plaintiff filed petition for Assistance Judiciaire, he claimed that there was one Arokiasamy, an alleged descendent of Royal family of Pallavas. In the pauper petition also in more than one place, he referred to Arokiasamy and not Arockiam. However, when he presented the Assignation, he used Arockiam instead of Arokiasamy.

3.11. There is no record to indicate the act of migration of Arockiam to Pondicherry. There is no specific averment as to who provided him the jewels allegedly taken by him when he came to Pondicherry.

3.12. All rights of action are extinguished by prescription after thirty years. The basis for the claim of the plaintiffs is laid approximately one hundred and sixty years ago and hence, such a claim is barred. In the year 1973 by way of amendment, the first plaintiff claimed that the mystic will dated 21.1.1933 is false. In the original Assignation dated 29.4.1965 and in Assistance Judiciaire he did not make any such claim. Hence, this plea became barred even in the year 1973. The testator of the will dated 21.1.1933 died on 24.6.1935 and the will should have been challenged on or before 1965, but no action was taken within time. The plea now made in the year 1985 is therefore barred by limitation.

3.13. The second plaintiff trust is a creation lis pendens and it cannot have any independent right. It cannot claim to be a collateral of Louis Gnana Aroquiassamy. Hence, the challenge of the

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will dated 21.1.1933 by the 2nd plaintiff is also barred. The notarial will dated 21.1.1933 was executed by Louis Gnana Aroquiassamy Mudaliar in respect of his properties at Pondicherry, whereas the will dated 9.2.1935 is in respect of his properties in Tamil Nadu. In respect of the properties in Tamil Nadu, the will dated 9.2.1935 got probated in the District Court of South Arcot in O.S.No.11/1936 and letters of administration was obtained by Pappayee ammal.

3.14. The properties in Pondicherry belonging to the Estate were originally acquired by Sinnaya Mudaliar and his sons and grandsons in between 1880 and 1935 out of their personal business income and savings. So also, the properties in Tamil Nadu were acquired by Louis Gnanapragasa Mudaliar between 1900 and 1920. The property at Madras was purchased by Louis Gnana Aroquiassamy Mudaliar and his brother Louis Gnana Sinnaya alias Cannaya on 2.2.1925 from one Frank Gibson. Hence, all the properties did not belong to Louis Gnana Aroquiassamy Mudaliar in entirety. He was only a co-owner with his brother.

3.15. Louis Gnana Sinnaya alias Cannaya died on 25.8.1927 intestate and his widow Saradambal became entitled to his half share. She made a notarial will at Pondicherry on 9.4.1942 in respect of her half share in favour of Victor Jegannathan, father of the 11th defendant (Louis Sinnaya Arokiasamy Mudaliar) and defendants 12 and 18. In respect of other half share, Louis Gnana Aroquiassamy Mudaliar remained to be the owner and the first plaintiff, who claims right over the estate of Louis Gnana Aroquiassamy Mudaliar could only claim right over a half share of the estate.

3.16. The jewels in court custody are personal properties of Victor Jegannatha Mudaliar who acquired some of them out of his income and inherited some jewels from Saradambal and Pappayee ammal. The jewels are not subject matter of bequest either under the will dated 21.1.1933 or under the will dated 9.2.1935. By inheritance, the jewels became the properties belonging to defendants 11, 12 and 18.

3.17. The will dated 9.2.1935 was probated and acted upon. Louis Gnana Aroquiassamy Mudaliar executed the mystic will dated 21.1.1933 and the Notaire recorded the presentation of the will by Louis Aroquiassamy Mudaliar. On the death of testator on 24.6.1935 the Notaire presented the will before the Court of First Instance on 8.7.1935 and the Court opened the will and ordered it to be registered. There is no question of superceding of the will dated 21.1.1933 as claimed by the plaintiffs. The will dated 9.2.1935 relates to the properties situate in South Arcot. Hence, no question of cancellation of the will dated 21.1.1933 would arise.

3.18. The first plaintiff is a third party and there is no

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question of any reversionary right in his favour. By will dated 21.1.1933, Louis Gnana Aroquiassamy Mudaliar bequeathed his properties to the church, defendants 8, 9 and 3 to 7. He gave his residuary properties to his four legatees, viz., his brother-in-law Duraiya, nephew Victor Jegannatha Mudaliar, wife Pappayee ammal and brother's wife Saradambal. The testator gave life interest to the abovesaid four legatees and absolute estate to the male issues of Victor Jegannathan, viz., defendants 11 & 12 and Divianathan alias Duraiya Mudaliar. Duraiya Mudaliar died intestate without issues. Vedavalli alias Sagunthala, widow of Duraiya died on 10.7.1941. Saradambal died on 28.12.1943 without issues. Pappayee ammal died on 23.6.1965 without issues and Victor Jegannathan died on 8.8.1965 leaving the defendants 11 and 12 as male issues. Therefore, the estate of Louis Gnana Aroquiassamy Mudaliar in Pondicherry devolved on the defendants 11 and 12.

3.19. In respect of properties at South Arcot District and Madras city, Louis Gnana Aroquiassamy Mudaliar by will dated 9.2.1935 gave life interest to his wife Pappayee ammal and absolute ownership to Divianathan alias Duraiya Mudaliar, Vedavali alias Sakunthala and Annou Kuzhandaiammal. Of these legatees, Duraiya died on 11.9.1935 leaving his right to his widow Vedavalli alias Sakunthala and sisters Pappayee ammal and Saradambal. Vedavalli died leaving her brother Victor Jegannathan and one another who inherited her properties. Pappayee ammal executed a registered will on 21.10.1959 giving her right to Victor Jegannathan. Saradambal executed a Notarial will on 9.4.1942 bequeathing her right to Victor Jegannathan. Victor Jegannathan also inherited the interest of Vedavalli alias Sakunthala who died intestate without issues. Annou Kulandai ammal entitled to 1/3rd of the bequest made a will on 25.1.1942 in favour of her sons Victor Jegannathan and Antoine Rajabathar. Hence, the right created under the will dated 9.2.1935 became the subject matter of family arrangement between the beneficiaries, viz., Victor Jegannathan, Antoine Rajabathar and others. The contrary claim of the 1st plaintiff is false.

3.20. The plaintiffs' claim that Louis Gnana Aroquiassamy Mudaliar is a 5th degree descendent of Arockiam is denied. Neither the first plaintiff, nor the alleged 142 persons are collaterals of Louis Gnana Aroquiassamy Mudaliar.

3.21. There is no trust legally created as claimed by the first plaintiff. The creation of the trust is lis pendens and it gains no legal validity. The creation of the trust does not vest in it any legal status as a person and therefore, the 2nd plaintiff cannot be a person on record and has to be deleted.

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3.22. The first plaintiff has no right to claim the entire suit properties for himself since he has not filed the suit in representative capacity. He can, at the most, claim his 1/143 share in the suit properties. The averment by the 1st plaintiff that he had obtained transfer of right from 142 co-sharers is not correct. The alleged 142 collaterals did not relinquish their right in favour of the 1st plaintiff. The documents filed by the 1st plaintiff cannot be accepted as release deeds.

3.23. Anna Marie, wife of the 1st plaintiff, in her capacity, can be the power of attorney of her husband only and the alleged 142 co-sharers did not give any power to Anna Marie. The 1st plaintiff alone gave power to Anna Marie, that too, in his personal capacity and not in representative capacity of 142 co-sharers.

3.24. The first plaintiff has allegedly obtained release deeds from other collaterals with an undertaking and promise to pay Rs.5,000/- each if he succeeds in this case. The release deeds are not properly stamped and registered.

3.25. The genealogy chart furnished by the first plaintiff is only a fiction and there is no proof or basis for the same.

3.26. The court fee is not paid by each of the plaintiffs as required under law and hence, the suit cannot be sustained. There are misjoinder of parties also.

3.27. The 16th defendant had purchased the establishment Savana in 1956 itself and it did not undertake to discharge any debt and the 16th defendant is not liable to pay any amount either to Louis Gnana Aroquiassamy or to anybody claiming under him.

3.28. The 17th defendant, United Commercial Bank, Pondicherry, is an unnecessary party to the suit as no amount is lying in the name of Louis Gnana Aroquiassamy Mudaliar.

3.29. The first plaintiff launched the speculative litigation based on inferences drawn on surmises and hence, the suit is liable to be dismissed with exemplary costs.

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IV.ISSUES FRAMED & TRIED BY THE TRIAL COURT

4.On the basis of pleadings, the following issues were framed for trial:

1. Whether the suit filed by 1st plaintiff is in individual capacity or a representative suit according to law?

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2. Whether the plaint and the suit as framed by plaintiffs are valid and maintainable?

3.Whether the suit is barred by law including limitation and whether plaintiff's right and claim has been extinguished in law?

4. a) Whether there was any Arokiam of alleged Korthampet village, Chengam taluk of North Arcot District who migrated to Pondicherry 160 years ago leaving brothers at Chengam as averred in the plaint?

b) If so, whether the said Arokiam lived with his brothers in any joint family of Hindu Law at the surroundings of Korthampet?

c) If so, whether the said Arokiam migrated to Pondicherry with some jewels in gold and lived in a joint family as averred in the plaint?

5. Whether the said Arokiam was a descendent of Royal Pallava King according to facts and events as alleged by the plaintiff?

6. Whether the plaintiff No.1 and alleged 142 collaterals are the descendants of said Arokiam and his brothers of said Korthampet and if so, whether they lived a joint family of Hindu Law with the deceased Louis Gnana Arokiasamy Mudaliar?

7. Whether the suit valuation and court fee paid is correct and whether the 2nd plaintiff is liable for payment of any court fees? If so, to what amount?

8. Whether the plaintiffs have any legal right, competency and locus standi to dispute the challenge the mystic will dated 21.1.1933 executed by the deceased Louis Gnana Arokiasamy Mudaliar as false, forged and therefore null and void?

9. Whether the Notarial mystic will dated 21.1.1933 executed by late Louis Gnana Arokiasamy Mudaliar superseded by the will dated 9.2.1935 executed by Louis Gnana Arokiasamy Mudaliar?

b) Whether the said Louis Gnana Arokiasamy Mudaliar has got any right to execute any will in respect of the suit properties? If so, whether the 1st plaintiff and other collaterals are entitled to any share?

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10. Whether the suit schedule properties belonged to the estate of Louis Gnana Arokiasamy Mudaliar and whether teh plaintiffs have any right or claim in the jewels removed from 163 and 164 M.G.Road, Pondicherry and kept in State Bank Lockers under orders of Court?

11. Whether all the alienations by sale or otherwise by the legatees under the will dated 21.1.1933 and 9.2.1935 are valid and binding on 1st plaintiff and other collaterals?

12. a) Whether the plaintiff can claim relief in respect of properties in the former British Indian Territory and for which probate was ordered on the will dated 9.2.1935 by Court of law?

b) Whether teh plaintiffs are entitled to the whole estate both immovable and movable including the jewels in State Bank, Deposit in UCO Bank and Land Acquisition Compensation amount, etc.?

13. Whether the defendants have to deposit and remit the income from suit properties into the hands of persons to whom it will be judicially ordered? If so, to what period?

14. To what reliefs, are the parties entitled?

V.FINDING OF TRIAL COURT ON ISSUES

5. Even though as many as 14 issues were framed, the trial Court mainly considered the question of maintainability and decided the suit against the plaintiffs. By judgment dated 9.5.1991, the trial Court dismissed the suit holding that the plaintiffs have no locus standi to file the suit. Aggrieved by the judgment and decree, the plaintiffs have preferred the above appeal.

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VI.CONTENTION IN THE APPEAL

6. In the grounds of appeal, the appellants/plaintiffs have raised almost all the points that were raised in the suit.

7. Pending appeal, the 12th respondent in the appeal filed miscellaneous petitions seeking for return of certain movable properties and this Court, by order dated 6.11.2003 in C.M.P.Nos.1090 of 2000, 3691 of 2002, 17708 and 17709 of 2003, directed interim custody of the movable properties in favour of some

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of the respondents. Aggrieved by the said order, the 11th respondent in the appeal has filed Review Application No.145 of 2003.

VII.POINTS FOR CONSIDERATION

8. The points for consideration in this appeal are:

1. Whether the suit as framed is within the time?

2. Assuming that the suit is within time, whether it is framed as per the requirements of the Code of civil Procedure?

3. Whether the plaintiffs have proved their case, and to what relief the appellants/ plaintiffs are entitled?

9. Before we go into the merits of the case, it is profitable to notice that this suit was originally filed by way of an Assignation dated 29.4.1965 by Anna Marie Bernard Joseph. Then, a petition was filed for permission to sue informa pauperis, which was granted initially. Later, on enquiry, the said permission was revoked and the court fee was ordered to be paid. The first plaintiff paid the court fees. On the direction of the court, the Affairs No.292/1965 was converted into original suit and numbered as O.S.No.454 of 1985 on the file of Principal Subordinate Judge, Pondicherry, which was later transferred to Principal District Court, Pondicherry and numbered as O.S.No.2 of 1978.

VIII. POINT NO.1

"Whether the suit as framed is within the time?"

10. In so far as the first point, namely, whether the suit is filed within the time is concerned, Mr.G.Masilamani, learned senior counsel appearing for the appellants/ plaintiffs submitted that the suit was initially filed as per the French Procedure that prevailed at that point of time and after the Civil Procedure Code was extended to the Union Territory of Pondicherry, an amended plaint was filed. According to him, as per Section 20 of Pondicherry Civil Courts Act, 1966 the earlier proceedings under the French Code would not get lapsed and the same could be transferred to the Court under Civil Procedure Code.

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11. Section 20 of the Pondicherry Civil Courts Act, 1966 reads as follows:

"20.Pending proceedings:- (1) Any proceedings of a civil nature pending in a court immediately before the commencement of this Act shall, on such commencement, be deemed to be transferred to the Court exercising jurisdiction under this Act in which the proceeding would

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have lain if it had been instituted after such commencement, and the court to which the proceeding is transferred shall proceed to try, hear and determine the matter as if it had been pending therein."

12. In the given case, it is true that the proceedings were originally initiated under the French Code and later converted into civil proceedings by order of the Court under section 20 of the Pondicherry Civil Courts Act, 1966 and an amended plaint was filed. In the light of section 20 of the Pondicherry Civil Courts Act, the trial Court is justified in holding that the above suit is only continuation of earlier proceedings.

13. The plaintiffs have sought to challenge the mystic will dated 21.1.1933 (Ex.A-58) on the ground that it is null and void. The will dated 21.1.1933 was executed by the husband of the first defendant Papayee ammal. According to them, the will dated 21.1.1933 is a forged will and when there are heirs of sixth degrees, the properties cannot be given to persons who are not capable of inheriting the properties. The plaintiffs claim that the will dated 21.1.1933 was superseded by the subsequent will dated 9.2.1935 (Ex.B-15). Therefore, the case of the defendants that the plaintiffs had not taken steps to cancel the will within 30 years from the date of death of the testator, who died in 1935, and hence, the suit is barred by time cannot be brushed aside.

14. Further, it is the case of the plaintiffs that the suit properties originally belonged to one Arockiam, an alleged descendant of Royal family of Pallavas and his 5th degree descendant, by name, Louis Aroquiassamy Mudaliar executed the will dated 21.1.1933 which was superseded by the later will dated 9.2.1935. The plaintiffs claim reversionary right over the suit properties based on the will dated 9.2.1935. According to the defendants, the will dated 21.1.1933 was not superseded and the said will relates to the properties situate in the Union Territory of Pondicherry whereas the will dated 9.2.1935 relates to the properties situate in South Arcot District and hence, the question of superceding the earlier will by the latter will would not arise. Therefore, when the plaintiffs soght to challenge the wills and also claim rights under the wills, they should have initiated proceedings much earlier.

15. In so far as the second plaintiff trust is concerned, it was impleaded in the year 1986. The 2nd plaintiff trust is a creation of the first plaintiff by way of trust deed Ex.A-2. Ex.A-2 narrates the history of Pallavas, based on the article written by Dr.M.Arokiasamy, besides containing various duties and objects of the trust. But, there is no evidence on record to show that the second plaintiff trust has got any connection with the collaterals of Louis Gnana Aroquissamy Mudaliar and as rightly observed by the

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trial Court, the right of the 2nd plaintiff over the suit properties would depend on the success of the first plaintiff and it is not clear, how the second plaintiff has locus standi to prosecute the suit. Therefore, as rightly held by the trial Court, the plaintiffs cannot make a claim against the will dated 21.1.1933 after a period of about 50 years from the date of death of the testator and the suit as framed is barred by limitation.

IX.POINT NO.2

"Assuming that the suit is within time, whether it is framed as per the requirements of the Code of civil Procedure?"

16. The case of the plaintiffs is that the properties belong to 143 collaterals including the original plaintiff, Bernard Joseph. The said Bernard Joseph has filed the suit through his power of attorney, first plaintiff. It is the case of the plaintiffs that Bernard Joseph is representing other 142 collaterals and he has no intention to appropriate for himself all the properties and he is intending to allot each of the collaterals an amount of compensation. But, it is relevant to notice that the original plaintiff Bernard Joseph is unconnected to this case, because he does not make any claim in his personal capacity. Bernard Joseph in his evidence as P.W.1, has stated that he contacted 142 collaterals in Korthampet, but he does not know their names. As rightly pointed out by the learned counsel for the defendants, Bernard Joseph has failed to prove that he is the right party to represent 142 collaterals. The trial Court has correctly come to the conclusion that Bernard Joseph has to be non-suited on the sole ground of approaching the court with champertous agreements for the purpose of a speculative litigation. Further, Bernard Joseph has already appointed his wife as his Power of attorney to claim his right and hence, he cannot be a representative of others who are claiming interest in the properties. After Bernard Joseph has given power of attorney to his wife, he cannot, at the same time, represent the other 142 collaterals. Except the plaintiff Bernard Joseph as P.W.1, the plaintiffs, for the best reason known to them, have not chosen to examine anyone of the 142 collaterals of Louis Aroquiassamy Mudaliar or their legal heirs to prove their identity tracing the collateral link with Louis Aroquiassamy Mudaliar and to connect their relationship with the plaintiff Bernard Joseph. Therefore, the collateral link between the plaintiff Bernard Joseph and other 142 collaterals and also between Louis Aroquiassamy Mudaliar and the collaterals remain unsubstantiated, which is a fundamental and relevant factor to decide the cause of action in the suit.

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17. Of course, the learned senior counsel for the appellants/plaintiffs argued that there are some documents which are in custody of the Registry, which would reveal that the plaintiffs are entitled to the suit properties. In this case, in interlocutory proceedings, an advocate/ Commissioner was appointed and on the basis of directions of this Court, the boxes containing documents were brought and kept in the custody of this Court. At the time of hearing, the boxes were opened in the presence of counsel for both the sides. Most of the documents are very old and in damaged condition; some of them are in English, some of them are in Tamil, and some of them are in French. Since no further steps were taken on behalf of the plaintiffs to connect the documents with their case in the manner known to law, except bringing the documents in boxes to the Court, we are unable to place any reliance on the same. We are therefore of the opinion that the plaintiff Bernard Joseph has not proved that he is the representative of 142 collaterals and the suit as framed is not in conformity with the provisions of C.P.C. The point No.2 is answered against the plaintiffs.

X.POINT NO.3

"Whether the plaintiffs have proved their case, and to what relief the appellants/ plaintiffs are entitled?"

18. In view of our above findings on point Nos.1 & 2, the appeal has to fail, however, considering the elaborate arguments made, we proceed to delve into other aspects of the matter. The plaintiffs have produced the genealogy, Ex.A-1 to show that 143 collaterals are entitled to the suit properties. The genealogy spreads over a period of 160 years. It is the case of the plaintiffs, as seen from the evidence of P.W.1, that Arockiam of Korthampet was a descendant of Royal family of Pallavas who came to Pondicherry to settle there with some jewels and he took shares from Sawana Mills of Pondicherry and acquired properties out of his efforts and earnings and his 5th degree descendant was Louis Gnana Aroquiassamy Mudaliar and Bernard Joseph is one of the agnates (pangali) as evident from Ex.A-1 genealogical table. According to the plaintiffs, Bernard Joseph is one of the agnates of Louis Gnana Aroquiassamy Mudaliar. However, the defendants deny the same and according to the defendants, Arockiam of Pondicherry is a person unconnected to the Royal family of Pallavas. It is the evidence of P.W.1 that Ex.A-1 genealogy was prepared on the basis of materials supplied by Bernard Joseph. Apart from the evidence of P.W.1, there is no material available to support Ex.A-1 genealogy.

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19. The Supreme Court in State of Bihar v. Radha Krishna Singh (AIR 1983 SC 684) considered the question what has to be kept in mind while relying upon genealogy and held as under:

> "... as there is a tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim, to concoct, fabricate or procure false genealogy to suit their ends, the courts in relying on the genealogy put forward must guard themselves against falling into the trap laid by a series of documents or a labyrinth of seemingly old genealogies to support their rival claims.
>
> 19. The principles governing such cases may be summarised thus:
>
> (1) Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of the facts proved but there are several considerations which must be kept in mind by the courts before accepting or relying on the genealogies:
>
> (a) Source of the genealogy and its dependability.
>
> (b) Admissibility of the genealogy under the Evidence Act.
>
> (c)A proper use of the said genealogies in decisions or judgments on which reliance is placed.
>
> (d) Age of genealogies.
>
> (e) Litigations where such genealogies have been accepted or rejected.
>
> (2) On the question of admissibility the following tests must be adopted:
>
> (a) the genealogies of the families concerned must fall within the four corners of S.32(5) or S.13 of the Evidence Act.
>
> (b) They must not be hit by the doctrine of post litem motam.
>
> (c) The genealogies or the claims cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long course of decisions to be inadmissible.
>
> (d)Where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowlege disclosing the exact source, time and the circumstances under which the knowledge is acquired and this must be clearly and conclusively proved."
>
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"24. It is well settled that when a case of a party is based on a genealogy consisting of links, it is incumbent on the party to prove every link thereof and even if one link is found to be missing, then in the eye of law the genealogy cannot be said to have been fully proved."

(Emphasis supplied)

20. In the instant case, P.W.1 (Bernard Joseph) has alone spoken about Ex.A-1 genealogy and there is no other material in support of Ex.A-1. The evidence of P.W.1 does not show the special means of knowledge disclosing the exact source, time and the circumstances under which he acquired the knowledge as to the line of descendants, which has to be clearly and conclusively proved.

21. The trial Court, on the basis of evidence, found that the genealogy Ex.A-1 appears to be a fiction and there is no proper factual basis for the genealogy. Even though Ex.A-1 seems to be a graph of family tree running for a period of about 160 years, as rightly pointed out by Mr.T.V.Ramanujam, learned senior counsel, Ex.A-1 is a self-styled genealogy prepared by the advocate on the instructions given by the plaintiff Bernard Joseph. Further, as already observed, except P.W.1 Bernard Joseph none has been examined on the side of plaintiffs. The plaintiffs have not chosen to examine anyone of the 142 collaterals of Louis Aroquiassamy Mudaliar or their legal heirs to prove the collateral link between the plaintiff Bernard Joseph and other 142 collaterals and also between Louis Aroquiassamy Mudaliar and the collaterals, which is the basis for proving the genealogy Ex.A-1. We therefore hold that the plaintiffs have not proved every link of the genealogy Ex.A-1 and we agree with the view of the trial Judge that Ex.A-1 should not be given any credence.

22. Substantiating the claim of the plaintiffs that the plaintiff Bernard Joseph is representing other 142 collaterals, the learned senior counsel for the appellants/ plaintiffs submitted that other collaterals have executed release deeds relinquishing their claims against the suit properties and being a collateral, the plaintiff Bernard Joseph is entitled to the properties and if he succeeds in the suit, the properties would go to the second plaintiff trust in terms of Ex.A-2 trust deed.

23. Mr.T.V.Ramanujam, learned senior counsel, on the other hand, brought to our notice the documents in Exs.A-8 to A-18, release deeds and submitted that they are champertous agreements and no reliance can be placed on those documents. It is seen from the documents that some of them contain the recital that if the plaintiff Bernard Joseph succeeds in the suit, the respective

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executants would receive a sum of Rs.5,000/-. Bernard Joseph in his evidence has stated that he did not pay a single paise to anyone of the parties who executed Exs.A-8 to A-18 and that the parties would file suits for recovery of the amount assured, if he fails to pay. It is therefore clear that in respect of the release deeds, the plaintiff Bernard Joseph did not pay any amount and therefore, no consideration has been passed as on date. In such circumstances, no reliance can be placed on Exs.A-8 to A-18.

24. Mr.G.Masilamani, learned senior counsel submitted that Ex.A-2 trust deed should be given due credence. According to him, the trust was created with an object to propagate the historical importance of Pallavas. It is the evidence of P.W.1 that the trust is created with a view to entrust the suit properties to the Government as the legacies of Mouriya Kingdom. A perusal of the trust deed Ex.A-2 shows that the donor Bernard Joseph claims himself to be a Pallava Nayak of Korthampet, Chengam taluk being the descendant of Thimmarasu, Minister of Krishnadevaraya of Vijayanagar Empire on the basis of some documents including an article written by Dr.Arokiasami, Ex.A-4. It is the case of the plaintiff Bernard Joseph that the properties covered in the trust deed belong to collaterals and on the basis of release deeds executed by the collaterals, he has got right over the properties. As already observed, the release deeds cannot be relied upon, because in most of the cases consideration has not been passed to the executants. As rightly pointed out on behalf of the defendants, the trust is a creation lis pendens and it cannot have any independent right. Appreciating the evidence on record, the trial Court held that there is no evidence to show that the trust has got any connection with collaterals of Louis Gnana Aroquiassamy Mudaliar but, on the other hand, the right of the trust over the suit properties depends on the success of the plaintiff No.1.

25. A cursory perusal of Ex.A-2 trust deed shows that the first donor, namely, the plaintiff Bernard Joseph is referred to be the Pallava Nayak of Kartampet, Chengam taluk being a descendent of Thimmarasu, Minister of Krishnadevaraya of Vijayanagar Empire. It is stated in the deed that he is entitled to all the properties and jewels of Royal Pallavas, that the properties had been alienated to third parties and that the plaintiff Bernard Joseph instituted proceedings to recover the same. Citing the articles written by various authors, the deed refers to several ancient events and incidents tracing the history of Asoka, Gupta and Buddha, however, there is no link connecting the plaintiff Bernard Joseph with those historical events. Even according to the plaintiff Bernard Joseph, the properties on which the trust is to be formed, had already been alienated and steps were initiated to recover the properties. Therefore, as on date, the trust is not vested with any property. Further, the objects of the trust, as seen from the deed, are

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nothing but illusionary, such as giving medals in the names of Vikramaditya, Kandinya, etc. It is not clear on what basis the alleged medals are to be given. Further, the deed refers to the celebration of "Asoka Jayanthi Day", but it is silent on which date and on what basis it should be done. On the reading of the deed, we are of the view that the trust deed Ex.A-2 cannot be given much weight.

26. Mr.G.Masilamani, learned senior counsel has placed heavy reliance on the article, "The Pallava Naicker of Korthampet" (Ex.A-4) written by Dr.Arockiasamy to show that Arockiam was a descendent of Pallava Naicks. According to the plaintiffs, the author submitted the said article to the Royal Asiatic Society of Calcutta which approved the article. However, the case of the defendants is that Arockiam, ancestor of Louis Aroquiassamy Mudaliar is in no way connected with Pallava Naicker of Korthampet and he was a resident of Pondicherry and he did not come from Korthampet.

27. As the claim of the plaintiffs revolves on the concept of Pallava Nayakas which draws the support from Ex.A-4 article, "The Pallava Nayakas of Kortampet" written by Dr.Arokiaswami and submitted to the Royal Asiatic Society of Calcutta, we feel it necessary to examine the same. The said article is found in the Journal of the Asiatic Society, Vol.V, Nos.1 & 2, 1963. A reading of the article shows that it traces the history from the time of Rajaraja-III as well as his contemporaries, such as Sambuvarayas and Kadavarayas. It also deals with the history of Pallavas. In so far as Nayakas of Kortampeth are concerned, it is the version of the author that one B.Joseph alias Balasundaram Mudaliar, a Railway Official brought to his notice a coin taken from the region of Anantal, a village in North Arcot District which resembles a coin of the Vijayanagar period and that the place from where the coin was discovered also has a large inscription engraved on a huge rock embedded in the ground. According to the author, the origin of Nayakas starts from one Timma Nayaka, as mentioned in the Anantal inscription, who is the person escaped from the confinement of Krishnadevaraya. The author further says that in this way the Pallava dynasty came to be re-established at Anantal in the first half of the sixteenth century. The author cited a story as told by certain families living in the village of Kortampet that there were four brothers who were enjoying the palayapat, that three left for battle leaving behind one to take care of their families and that when the news came to Anantal that all the brothers had died in battle, the surviving brother committed suicide after massacring the entire family of Nayakas sparing one pregnant woman who delivered a male child, in due course, of whom the Pallavas of Korthampet are the descendants. Thus, the article proceeds on the above footing to show that there are Pallavas of Korthampet. But, the plaintiffs have not chosen to connect the said article with the legal heirs of any

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of the persons mentioned therein by oral evidence of any of such legal heirs. That apart, it is not clear and it is also not the submission of the learned senior counsel for the appellants that the said article has been approved by the Royal Asiatic Society of Calcutta. Even assuming that the article establishes that there existed Pallavas of Korthampet, the plaintiffs should have established that Bernard Joseph and other collaterals are the descendants of Pallavas of Korthampet, particularly when the case of the defendants is that Louis Aroquiassamy Mudaliar is in no way connected with Pallavas of Korthampet and was a resident of Pondicherry. We are therefore of the opinion that the abovesaid article, Ex.A-4 would not help the plaintiffs in any way.

XI.CONCLUSION

28. Taking into consideration all aspects of the matter, we are of the considered opinion that Ex.A-1 genealogy cannot be relied upon as, except the oral evidence of P.W.1, there is no other supporting evidence. As regards Ex.A2 trust deed, it is a creation lis pendens and the source of the properties covered in the deed has not been proved, as there is no consideration passed under the release deeds allegedly executed by other collaterals in favour of the plaintiff Bernard Joseph and hence, Ex.A-2 is not helpful to the plaintiffs. So also, the article (Ex.A-4) written by Dr.Arockiam is not useful to decide the case on hand. All the more, as discussed earlier, the suit as filed is barred by limitation as the plaintiffs sought to challenge the will of the year 1933 after 30 years from the date of death of the testator and that the first plaintiff cannot represent other collaterals. When the case of the defendants is that Arockiam, ancestor of Louis Aroquiassamy Mudaliar is in no way connected with Korthampet village, Sengam taluk, the plaintiffs should have proved that the said Arockiam came from Korthampet village to settle at Pondicherry, which they have failed to do. The documents filed by the plaintiffs are also not helpful to prove the case of the plaintiffs.

29. On an analysis of the plaint, apart from the mere bald statements as to the relationship of the plaintiff Bernard Joseph with Pallavas as well as other collaterals, there is no other material to prove the same. When the plaintiffs are questioning the will of the year 1933, no explanation whatsoever is available in the plaint as to the situation under which the suit was filed after a long period of nearly fifty years. The attempt of the plaintiffs in filing the suit without any material proving their relationship with the alleged collaterals as well as with Louis Aroquiassamy Mudaliar is nothing but the abuse of the process of Court. It is nothing but a vexatious suit instituted without sufficient grounds. There should not be any abuse of process of the Court by a person who has instituted vexatious legal proceedings

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without any legal right. The Courts of law should be careful enough to see through such diabolical plans of the plaintiffs in dragging the other side to the Court. The litigation, in our view, cannot but be termed to be utterly vexatious and abuse of the process of Court, more so by reason of the fact that the plaintiffs are challenging or claiming title under the wills of the year 1933 and 1935 after a period of nearly fifty years. In this view of the matter, the suit is liable to be dismissed and the trial Court was right in dismissing the suit.

30. Before concluding, we have to mention about the documents summoned by this Court, by order dated 2.2.2006. The documents in boxes were brought to the Court by the advocate-Commissioner from the building at Door No.163 (New No.381), M.G.Road, Pondicherry. The boxes were opened in the Open Court and we perused the documents and found that they are all ancient documents. However, in the absence of any step taken by the plaintiffs to connect the documents with the prayers sought for in the suit or with the suit properties, no reliance can be placed on those documents. It is settled law that the judicial process cannot be used to collect evidence for or against either of the parties except in the manner provided in the Code. We therefore direct the Advocate-Commissioner appointed by this Court by order dated 28.7.2003 in C.M.P.No.3691 of 2002 to take possession of the documents from the Registry and hand over the same to the persons concerned under acknowledgment within two weeks from the date of receipt of copy of the judgment and the receipts of acknowledgment shall be handed over the Registry, which, in turn, shall form part of the records. The appellants are directed to pay a sum of Rs.5,000/- (Rupees five thousand only) and similarly, the contesting respondents (in all) are directed to pay a sum of Rs.5,000/- (Rupees five thousand only) to the Advocate-Commissioner, Mr.R.Bharanidharan, within one week from the date of receipt of copy of the judgment.

31. We also record our displeasure for the abuse of process of Court by the plaintiffs by filing a vexatious suit challenging the wills, which has consumed considerable time of the trial Court as well as this Court, particularly when the will of the year 1935 had already been probated by a Court of law. Though we are satisfied that it is a fit case to award exemplary costs, however, considering the submission made by Mr.G.Masilamani, learned senior counsel for the appellants that the plaintiff Bernard Joseph (P.W.1) is aged and bedridden, we do not award any costs.

32. The Review Application No.145 of 2003 is filed by the 11th respondent in the appeal challenging the order dated 6.11.2003 made in C.M.P.No.17708 of 2003 in A.S.No.908 of 1991. By the said order made in C.M.P.Nos.1090 of 2000, 3691 of 2002, 17708 and 17709 of 2003, a Division Bench of this Court directed the Commissioner to

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give interim custody of the articles found in the inventory to the respondents 11, 13 and L.Rs. of 18th respondent in the appeal. This Court also directed the Commissioner to value the silver articles or other valuable articles found in the inventory. Since it is an interim custody given by the order under review, subject to the result of the appeal suit and appeal itself stands dismissed, nothing survives in the review application. Hence, the review application is also liable to be dismissed.

In fine, the appeal stands dismissed. The review application is also dismissed. No costs.

na.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal District Judge, Pondicherry.

2. The Chief Judge, Pondicherry.

3. The Sherishtadar Principal District Court,
Pondicherry.

4. Mr. R. Bharanidharan, Advocate Commissioner,
No.25, Lawchambers, High Court, Madras.

5. The Registrar Judicial
High Court, Madras.

6. The Section Officer
Appeal Filing Section, High Court, Madras.

7. The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to Mr. T. V. Krishnamachari, Advocate SR No. 26585
+ 1 cc to Mr. M. Sriram, Advocate SR No. 26573
+ 4 ccs to Mr. T. R. Rajaraman, Advocate SR No. 26514

JE(CO)
SR/28.9.2006

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